

77 Box 29 - JGR/Independent Counsel – Roberts, John G.: Files  
SERIES I: Subject File

THE WHITE HOUSE

WASHINGTON

April 11, 1984

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: H.R. 5279, Independent Counsel for the  
District of Columbia

OMB has asked whether we have any objections to clearing a proposed Justice report on H.R. 5279. This bill, modeled after the independent counsel provisions of the Ethics in Government Act, would authorize the D.C. Corporation Counsel to request that the D.C. Superior Court appoint an Independent Counsel to investigate and prosecute cases involving the affairs of the D.C. Government. If such an Independent Counsel is appointed, the U.S. Attorney and the Corporation Counsel are precluded from conducting any investigation or proceeding within the defined jurisdiction of the Independent Counsel.

The proposed Justice report strongly opposes this bill. Justice notes that there is no need for a D.C. Independent Counsel, since the U.S. Attorney has no conflict of interest with D.C. Government officials and is fully capable of investigating and prosecuting crimes involving the affairs of the D.C. Government. The report also notes that the standards in the bill are extremely vague and unworkable. This bill is a looney idea and the Justice report is appropriately strong in listing its flaws. OMB would like our views orally by 4:00 p.m. today; unless you object I will note no objection to the proposed Justice report.

Attachment

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO Anna Dixon	Take necessary action <input type="checkbox"/>
Adrian Curtis	Approval or signature <input type="checkbox"/>
Branden Blum	Comment <input type="checkbox"/>
Mike Horowitz	Prepare reply <input type="checkbox"/>
✓ John Roberts/WH Counsel	Discuss with me <input type="checkbox"/>
	For your information <input type="checkbox"/>
	See remarks below <input type="checkbox"/>
FROM Jan Fox <i>Jan Fox</i>	DATE 4/11/84

REMARKS

Attached for clearance is a draft Justice letter for the record on H.R. 5279, re appointing an independent counsel for the District of Columbia. A hearing is scheduled for tomorrow in the House District Committee on the bill. Although Justice is not testifying at the hearing, it would like to send the report up today or tomorrow.

Accordingly, please get me your comments by 4:00 p.m. today. If I don't hear from you by then, I will assume you have no objections.



# DRAFT

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Mervyn M. Dymally  
Chairman  
Subcommittee on Judiciary and  
Education  
Committee on the District of  
Columbia  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This letter responds to your separate letters to United States Attorney diGenova and myself with respect to the Subcommittee's hearing on April 12, 1984 regarding H.R. 5279, a bill to provide for the establishment of an independent counsel under circumstances requiring the investigation and possible prosecution of alleged violations of law arising from the conduct of the affairs of the District of Columbia government." We regret that we will be unable to appear at the hearing. However, while we have not reviewed the legislation extensively, we must convey our strenuous opposition to its enactment.

H.R. 5279 would establish a procedure where the Corporation Counsel of the District of Columbia would institute an investigation when he receives information that a violation of law involving the affairs of the District of Columbia government has occurred. If the Corporation Counsel determines that there are reasonable grounds to believe that further investigation or prosecution is warranted, a request to the Superior Court of the District of Columbia for the appointment of an independent Counsel must be made. The Superior Court shall then appoint an independent counsel and define his prosecutorial jurisdiction. Finally, H.R. 5279 precludes the United States Attorney or the Corporation Counsel from conducting any investigation or proceeding involving the particular subject matter.

The United States Attorney for the District of Columbia, as the delegate of the President and the Attorney General, has the statutory prosecutive authority in the U.S. District Court and the District of Columbia Superior Court. D.C. Code §23-101. This responsibility covers offenses under the District of Columbia Code and federal statutes and includes illegal activities ~~the~~

# DRAFT

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration program.

Sincerely,

ROBERT A. McCONNELL  
Assistant Attorney General

Attachment

98TH CONGRESS  
2D SESSION

# H. R. 5279

To provide for the establishment of an independent counsel under circumstances requiring the investigation and possible prosecution of alleged violations of law arising from the conduct of the affairs of the District of Columbia government.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 28, 1984

Mr. FAUNTROY (for himself, Mr. DELLUMS, Mr. DYMALLY, and Mr. GRAY) introduced the following bill; which was referred to the Committee on the District of Columbia

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## A BILL

To provide for the establishment of an independent counsel under circumstances requiring the investigation and possible prosecution of alleged violations of law arising from the conduct of the affairs of the District of Columbia government.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "District of  
5 Columbia Independent Counsel Act".

## 1       APPLICABILITY OF PROVISIONS OF THIS ACT

2       SEC. 2. The Corporation Counsel of the District of Co-  
3 lumbia (hereinafter in this Act referred to as the "Corpora-  
4 tion Counsel") shall conduct an investigation pursuant to the  
5 provisions of this Act whenever the Corporation Counsel re-  
6 ceives information sufficient to constitute grounds to investi-  
7 gate that there has been committed a violation (other than a  
8 violation constituting a petty offense) of any law of the Dis-  
9 trict of Columbia, or any law of the United States applicable  
10 exclusively to the District of Columbia, arising from the con-  
11 duct of the affairs of the District of Columbia government.

12       APPLICATION FOR APPOINTMENT OF AN INDEPENDENT  
13                               COUNSEL

14       SEC. 3. (a)(1) Upon receiving information that the Cor-  
15 poration Counsel determines is sufficient to constitute  
16 grounds to investigate that any violation of law covered by  
17 this Act under section 2 has occurred, the Corporation Coun-  
18 sel shall conduct, for a period not to exceed ninety days, such  
19 preliminary investigation of the matter as the Corporation  
20 Counsel considers appropriate. In determining whether  
21 grounds to investigate exist, the Corporation Counsel shall  
22 consider—

23               (A) the degree of specificity of the information re-  
24               ceived, and

25               (B) the credibility of the source of the information.

1       (2) In conducting preliminary investigations pursuant to  
2 this section, the Corporation Counsel shall have no authority  
3 to convene grand juries, plea bargain, or grant immunity.

4       (b)(1) If the Corporation Counsel, upon completion of  
5 the preliminary investigation, finds that there are no reason-  
6 able grounds to believe that further investigation or prosecu-  
7 tion is warranted, the Corporation Counsel shall so notify the  
8 Superior Court of the District of Columbia (hereinafter in this  
9 Act referred to as the "Superior Court") and the Superior  
10 Court shall have no power to appoint an independent coun-  
11 sel.

12       (2) Such notification shall be by memorandum contain-  
13 ing a summary of the information received and a summary of  
14 the results of any preliminary investigation.

15       (3) Such memorandum shall not be revealed to any indi-  
16 vidual outside the Superior Court, the Office of the Corpora-  
17 tion Counsel, the Office of the United States Attorney for the  
18 District of Columbia, or the Department of Justice without  
19 leave of the Superior Court.

20       (c)(1) If the Corporation Counsel, upon completion of  
21 the preliminary investigation, finds reasonable grounds to be-  
22 lieve that further investigation or prosecution is warranted,  
23 or if ninety days elapse from the receipt of the information  
24 without a determination by the Corporation Counsel that  
25 there are no reasonable grounds to believe that further inves-



1 tigation or prosecution is warranted, then the Corporation  
2 Counsel shall apply to the Superior Court for the appoint-  
3 ment of an independent counsel. In determining whether rea-  
4 sonable grounds exist to warrant further investigation or  
5 prosecution, the Corporation Counsel shall comply with the  
6 written or other established policies of the Office of the Cor-  
7 poration Counsel and the Office of the United States Attor-  
8 ney for the District of Columbia, as appropriate, with respect  
9 to the enforcement of any applicable law.

10 (2) If—

11 (A) after the filing of a memorandum under sub-  
12 section (b) of this section, the Corporation Counsel re-  
13 ceives additional information sufficient to constitute  
14 grounds to investigate about the matter to which such  
15 memorandum related, and

16 (B) the Corporation Counsel determines, after  
17 such additional investigation as the Corporation Coun-  
18 sel considers appropriate, that reasonable grounds exist  
19 to warrant further investigation or prosecution,

20 then the Corporation Counsel shall, not later than ninety  
21 days after receiving such additional information, apply to the  
22 Superior Court for the appointment of an independent  
23 counsel.

24 (d)(1) Any application under this Act shall contain suffi-  
25 cient information to assist the Superior Court to select an

1 independent counsel and to define such independent counsel's  
2 prosecutorial jurisdiction.

3 (2) No application or any other documents, materials, or  
4 memorandums supplied to the Superior Court under this Act  
5 shall be revealed to any individual outside the Superior  
6 Court, the Office of the Corporation Counsel, the Office of  
7 the United States Attorney for the District of Columbia, or  
8 the Department of Justice without leave of the Superior  
9 Court.

10 (e) The Corporation Counsel may ask an independent  
11 counsel to accept referral of a matter that relates to a matter  
12 within that independent counsel's prosecutorial jurisdiction.

13 (f) The Corporation Counsel's determination under sub-  
14 section (c) of this section to apply to the Superior Court for  
15 the appointment of an independent counsel shall not be re-  
16 viewable in any court.

17 DUTIES OF THE SUPERIOR COURT

18 SEC. 4. (a) Upon receipt of an application under section  
19 3 of this Act, the Superior Court shall appoint an appropriate  
20 independent counsel and shall define that independent coun-  
21 sel's prosecutorial jurisdiction. An independent counsel's  
22 identity and prosecutorial jurisdiction shall be made public  
23 upon request of the Corporation Counsel or upon a determi-  
24 nation of the Superior Court that disclosure of the identity  
25 and prosecutorial jurisdiction of such independent counsel

1 would be in the best interests of justice. In any event the  
2 identity and prosecutorial jurisdiction of such prosecutor shall  
3 be made public when any indictment is returned or any crimi-  
4 nal information is filed.

5 (b) The Superior Court, upon request of the Corporation  
6 Counsel which may be incorporated in an application under  
7 this Act, may expand the prosecutorial jurisdiction of an ex-  
8 isting independent counsel, and such expansion may be in lieu  
9 of the appointment of an additional independent counsel.

10 (c) The Superior Court may not appoint as an independ-  
11 ent counsel any person who holds or recently held any office  
12 of profit or trust under the District of Columbia government.

13 (d) If a vacancy in office arises by reason of the resigna-  
14 tion or death of an independent counsel, the Superior Court  
15 may appoint an independent counsel to complete the work of  
16 the independent counsel whose resignation or death caused  
17 the vacancy. If a vacancy in office arises by reason of the  
18 removal of an independent counsel, the Superior Court may  
19 appoint an acting independent counsel to serve until any judi-  
20 cial review of such removal is completed. Upon the comple-  
21 tion of such judicial review, the Superior Court shall take  
22 appropriate action.

23 (e) Upon a showing of good cause by the Corporation  
24 Counsel, the Superior Court may grant a single extension of

1 the preliminary investigation conducted pursuant to section 3  
2 of this Act for a period not to exceed sixty days.

3 (f) Upon request by any individual subject to an investi-  
4 gation conducted by an independent counsel pursuant to this  
5 Act, the Superior Court may, in its discretion, award reim-  
6 bursement for all or part of the attorney's fees incurred by  
7 such individual during such investigation if—

8 (1) no indictment is brought against such indi-  
9 vidual; and

10 (2) the attorney's fees would not have been in-  
11 curred but for the requirements of this Act.

12 **AUTHORITY AND DUTIES OF AN INDEPENDENT COUNSEL**

13 **SEC. 5. (a)** Notwithstanding any other provision of law,  
14 an independent counsel appointed under this Act shall have,  
15 with respect to all matters in such independent counsel's  
16 prosecutorial jurisdiction established under this Act, full  
17 power and independent authority to exercise all investigative  
18 and prosecutorial functions and powers of the Corporation  
19 Counsel and the United States Attorney for the District of  
20 Columbia. Such investigative and prosecutorial functions and  
21 powers shall include—

22 (1) conducting proceedings before grand juries and  
23 other investigations;

24 (2) participating in court proceedings and engag-  
25 ing in any litigation, including civil and criminal

1 matters, that such independent counsel considers  
2 necessary;

3 (3) appealing any decision of a court in any case  
4 or proceeding in which such independent counsel par-  
5 ticipates in an official capacity;

6 (4) reviewing all documentary evidence available  
7 from any source;

8 (5) determining whether to contest the assertion  
9 of any testimonial privilege;

10 (6) contesting in court (including, where appropri-  
11 ate, participating in in camera proceedings) any claim  
12 of privilege;

13 (7) making applications to any court of the Dis-  
14 trict of Columbia for a grant of immunity to any wit-  
15 ness, consistent with applicable statutory requirements,  
16 or for warrants, subpoenas, or other court orders;

17 (8) inspecting, obtaining, or using the original or a  
18 copy of any District of Columbia tax return, in accord-  
19 ance with the applicable statutes and regulations;

20 (9) initiating and conducting prosecutions in any  
21 court of competent jurisdiction, framing and signing in-  
22 dictments, filing informations, and handling all aspects  
23 of any case in the name of the District of Columbia or  
24 the United States, as appropriate; and

1           (10) consulting with the Corporation Counsel and  
2           the United States Attorney for the District of Colum-  
3           bia or any other district in which a violation was al-  
4           leged to have occurred.

5           (b) An independent counsel appointed under this Act  
6           shall receive compensation at a per diem rate equal to the  
7           annual rate of basic pay for level IV of the Executive Sched-  
8           ule under section 5315 of title 5.

9           (c) For the purposes of carrying out the duties of the  
10          office of independent counsel, an independent counsel shall  
11          have power to appoint, fix the compensation, and assign the  
12          duties, of such employees as such independent counsel con-  
13          siders necessary (including investigators, attorneys, and part-  
14          time consultants). The positions of all such employees are  
15          exempted from the competitive service. No such employee  
16          may be compensated at a rate exceeding the maximum rate  
17          provided for GS-18 of the General Schedule under section  
18          5332 of title 5.

19          (d) An independent counsel may request assistance from  
20          the Office of the Corporation Counsel and the Office of the  
21          United States Attorney for the District of Columbia, and  
22          such offices shall provide such assistance, including access to  
23          any records, files, or other materials relevant to matters  
24          within such independent counsel's prosecutorial jurisdiction,

1 and the use of the resources and personnel necessary to per-  
2 form such independent counsel's duties.

3 (e) An independent counsel may ask the Corporation  
4 Counsel, the United States Attorney for the District of Co-  
5 lumbia, the Attorney General, or the Superior Court to refer  
6 matters related to the independent counsel's prosecutorial ju-  
7 risdiction. An independent counsel may accept referral of a  
8 matter by the Corporation Counsel, the United States Attor-  
9 ney for the District of Columbia, or the Attorney General if  
10 the matter relates to a matter within such independent coun-  
11 sel's prosecutorial jurisdiction as established by the Superior  
12 Court. If such a referral is accepted, the independent counsel  
13 shall notify the Superior Court.

14 (f) An independent counsel shall, except where not pos-  
15 sible, comply with the written or other established policies of  
16 the Office of the Corporation Counsel and the Office of the  
17 United States Attorney for the District of Columbia respect-  
18 ing enforcement of the criminal laws.

19 (g) The independent counsel shall have full authority to  
20 dismiss matters within such counsel's prosecutorial jurisdic-  
21 tion without conducting an investigation or at any subsequent  
22 time prior to prosecution if to do so would be consistent with  
23 the written or other established policies of the Office of the  
24 Corporation Counsel and the Office of the United States At-  
25 torney for the District of Columbia.

## REPORTING AND OVERSIGHT

1  
2 SEC. 6. (a) An independent counsel appointed under this  
3 Act may make public from time to time, and shall send to the  
4 District of Columbia Council and the appropriate committees  
5 of the Congress statements or reports on the activities of  
6 such independent counsel. These statements and reports shall  
7 contain such information as such independent counsel consid-  
8 ers appropriate.

9 (b)(1) In addition to any reports made under subsection  
10 (a) of this section, and before the termination of an independ-  
11 ent counsel's office under section 7(b) of this Act, such inde-  
12 pendent counsel shall submit to the Superior Court a report  
13 under this subsection.

14 (2) A report under this subsection shall set forth fully  
15 and completely a description of the work of the independent  
16 counsel, including the disposition of all cases brought, and the  
17 reasons for not prosecuting any matter within the prosecuto-  
18 rial jurisdiction of such independent counsel which was not  
19 prosecuted.

20 (3) The Superior Court may release to the District of  
21 Columbia Council, the Congress, the public, or to any appro-  
22 priate person, such portions of a report made under this sub-  
23 section as the Superior Court considers appropriate. The Su-  
24 perior Court shall make such orders as are appropriate to  
25 protect the rights of any individual named in such report and



1 to prevent undue interference with any pending prosecution.  
2 The Superior Court may make any portion of a report under  
3 this section available to any individual named in such report  
4 for the purposes of receiving within a time limit set by the  
5 Superior Court any comments or factual information that  
6 such individual may submit. Such comments and factual in-  
7 formation, in whole or in part, may in the discretion of the  
8 Superior Court be included as an appendix to such report.

9 (c) The District of Columbia Council shall have over-  
10 sight jurisdiction with respect to the official conduct of any  
11 independent counsel appointed under this chapter, and such  
12 independent counsel shall have the duty to cooperate with  
13 the exercise of such oversight jurisdiction.

14 (d) A two-thirds majority of all members of the District  
15 of Columbia Council may request in writing that the Corpo-  
16 ration Counsel apply for the appointment of an independent  
17 counsel. Not later than thirty days after the receipt of such a  
18 request, or not later than fifteen days after the completion of  
19 a preliminary investigation of the matter with respect to  
20 which the request is made, whichever is later, the Corpora-  
21 tion Counsel shall provide written notification of any action  
22 the Corporation Counsel has taken in response to such re-  
23 quest and, if no application has been made to the Superior  
24 Court, why such application was not made. Such written no-  
25 tification shall be provided to the District of Columbia Coun-

1 cil, and shall not be revealed to any third party, except that  
2 by a two-thirds majority of all members of such Council, the  
3 Council may, either on its own initiative or upon the request  
4 of the Corporation Counsel, make public such portion or por-  
5 tions of such notification as will not in the Council's judgment  
6 prejudice the rights of any individual.

7 REMOVAL OF AN INDEPENDENT COUNSEL; TERMINATION  
8 OF OFFICE

9 SEC. 7. (a)(1) An independent counsel appointed under  
10 this Act may be removed from office only by the personal  
11 action of the Corporation Counsel and only for good cause,  
12 physical disability, mental incapacity, or any other condition  
13 that substantially impairs the performance of such independ-  
14 ent counsel's duties.

15 (2) If an independent counsel is removed from office, the  
16 Corporation Counsel shall promptly submit to the Superior  
17 Court, the District of Columbia Council, and the appropriate  
18 committees of the Congress a report specifying the facts  
19 found and the ultimate grounds for such removal. The Dis-  
20 trict of Columbia Council shall make available to the public  
21 such report, except that such Council may, if necessary to  
22 protect the rights of any individual named in the report or to  
23 prevent undue interference with any pending prosecution,  
24 delete or postpone publishing any or all of the report. The  
25 Superior Court may release any or all of such report in the

1 same manner as a report released under section 6(b)(3) of this  
2 Act and under the same limitations as apply to the release of  
3 a report under that section.

4 (3) An independent counsel so removed may obtain judi-  
5 cial review of the removal in a civil action commenced before  
6 the Superior Court and, if such removal was based on error  
7 of law or fact, may obtain reinstatement or other appropriate  
8 relief. The Superior Court shall cause such an action to be in  
9 every way expedited.

10 (b)(1) An office of independent counsel shall terminate  
11 when (A) the independent counsel notifies the Corporation  
12 Counsel that the investigation of all matters within the prose-  
13 cutorial jurisdiction of such independent counsel, or accepted  
14 by such independent counsel under section 5(e) of this Act,  
15 and any resulting prosecutions, have been completed or so  
16 substantially completed that it would be appropriate for the  
17 Office of the Corporation Counsel, the Office of the United  
18 States Attorney for the District of Columbia, or the Depart-  
19 ment of Justice to complete such investigations and prosecu-  
20 tions and (B) the independent counsel files a report in full  
21 compliance with section 6(b) of this Act.

22 (2) The Superior Court, either on its own motion or  
23 upon suggestion of the Corporation Counsel, may terminate  
24 an office of independent counsel at any time, on the ground  
25 that the investigation of all matters within the prosecutorial

1 jurisdiction of the independent counsel or accepted by such  
2 independent counsel under section 5(e) of this Act, and any  
3 resulting prosecutions, have been completed or so substan-  
4 tially completed that it would be appropriate for the Office of  
5 the Corporation Counsel, the Office of the United States At-  
6 torney for the District of Columbia, or the Department of  
7 Justice to complete such investigations and prosecutions. At  
8 the time of termination, the independent counsel shall file the  
9 report required by section 6(b) of this Act.

10 RELATIONSHIP WITH THE OFFICE OF THE UNITED  
11 STATES ATTORNEY FOR THE DISTRICT OF COLUMBIA

12 SEC. 8. (a) Whenever a matter is in the prosecutorial  
13 jurisdiction of an independent counsel or has been accepted  
14 by an independent counsel under section 5(e) of this Act, the  
15 Office of the United States Attorney for the District of Co-  
16 lumbia and the Office of the Corporation Counsel shall sus-  
17 pend all investigations and proceedings regarding such  
18 matter, except to the extent required by section 5(d) of this  
19 Act, and except insofar as such independent counsel agrees in  
20 writing that such investigation or proceedings may be  
21 continued.

22 (b) Nothing in this Act shall prevent the Corporation  
23 Counsel or the United States Attorney for the District of  
24 Columbia from making a presentation as amicus curiae to  
25 any court as to issues of law raised by any case or proceeding

1 in which an independent counsel participates in an official  
2 capacity or any appeal of such a case or proceeding.

3           AUTHORIZATION OF APPROPRIATIONS

4       SEC. 9. There are authorized to be appropriated such  
5 sums as may be necessary, to be held by the Office of the  
6 Corporation Counsel as a contingent fund, for the use of any  
7 independent counsels appointed under this Act. Any sums  
8 appropriated under this section shall remain available until  
9 expended.

○



U.S. Department of Justice  
Office of Legislative Affairs

DRAFT

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Mervyn M. Dymally  
Chairman  
Subcommittee on Judiciary and  
Education  
Committee on the District of  
Columbia  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This letter responds to your separate letters to United States Attorney diGenova and myself with respect to the Subcommittee's hearing on April 12, 1984 regarding H.R. 5279, a bill to provide for the establishment of an independent counsel under circumstances requiring the investigation and possible prosecution of alleged violations of law arising from the conduct of the affairs of the District of Columbia government." We regret that we will be unable to appear at the hearing. However, while we have not reviewed the legislation extensively, we must convey our strenuous opposition to its enactment.

H.R. 5279 would establish a procedure where the Corporation Counsel of the District of Columbia would institute an investigation when he receives information that a violation of law involving the affairs of the District of Columbia government has occurred. If the Corporation Counsel determines that there are reasonable grounds to believe that further investigation or prosecution is warranted, a request to the Superior Court of the District of Columbia for the appointment of an independent Counsel must be made. The Superior Court shall then appoint an independent counsel and define his prosecutorial jurisdiction. Finally, H.R. 5279 precludes the United States Attorney or the Corporation Counsel from conducting any investigation or proceeding involving the particular subject matter.

The United States Attorney for the District of Columbia, as the delegate of the President and the Attorney General, has the statutory prosecutive authority in the U.S. District Court and the District of Columbia Superior Court. D.C. Code §23-101. This responsibility covers offenses under the District of Columbia Code and federal statutes and includes illegal activities of

involving the District of Columbia government. There is no need for the cumbersome mechanism envisioned by H.R. 5279. A fundamental premise of the criminal justice system of the District of Columbia is the good judgment and integrity of the officers and employees of the Department of Justice. The implicit assumption of H.R. 5279, that the Department of Justice cannot conduct investigations and prosecutions fairly, effectively and competently, is simply unfounded.

Moreover, an element of unfairness emerges from the legislation. Formal and informal Department of Justice policies and precedents are established to protect those who are the subject of investigations. These policies are premised on the historical principle, emanating from the Constitution, that one is presumed innocent until proven guilty. These policies have their strength from the fact that ultimately all employees in the Department of Justice can be held accountable for any impropriety or incompetence. As it is unclear who the "independent counsel" is accountable to, H.R. 5279 distorts the present accountability of individuals which is an essential part of our system of government. H.R. 5279 is further objectionable in that it apparently intends to preclude an officer of the federal government, the United States Attorney, from carrying out his constitutional and statutory responsibility to enforce the law in the seat of the Nation's government.

We must also note that the mechanism established by H.R. 5279 is faulty and unworkable. The bill grants to the Corporation Counsel authority to conduct investigations which are beyond his present jurisdiction and expertise. Moreover, the standard which evokes the mechanism, "a violation . . . of any law . . . arising from the conduct of the affairs of the District of Columbia government" is so vague as to encompass any act such as a major felony by an elected official to the violation of a regulatory offense, such as smoking in a prohibited area by a civil service employee. The enforcement of the law is not served by procedures which offer no guidance to those who must enforce it and abide by it. H.R. 5279 departs from clear and enunciated standards which are the foundation of good laws.

Finally, H.R. 5279 appears to be premised on the notion that there is some type of conflict of interest present. We are unaware of any circumstances which have been raised which question the ability of the United States Attorney for the District of Columbia to meet his statutory responsibility of prosecutor in the District. By the very nature of his position, the United States Attorney, who is appointed by the President, and confirmed by the Senate, has no conflict. The record of the office in the area of public integrity demonstrates this. Accordingly, we cannot perceive a purpose or intent behind H.R. 5279.

In summary the Department of Justice opposes strongly enactment of H.R. 5279.

**DRAFT**

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration program.

Sincerely,

ROBERT A. McCONNELL  
Assistant Attorney General

Attachment

DRAFT





U.S. Department of Justice  
Office of Legislative Affairs

Office of the  
Assistant Attorney General

Washington, D.C. 20530

4/11

John:

For your review, This  
has been submitted to OMB  
with a hope that it can be  
submitted by tomorrow's  
hearing.

John Hagan

Ch. Independence Union

Box 24

Return to John C. Files